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Case Digest

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CASE DIGEST

This *Case Digest* provides brief analyses of cases that represent current aspects of transnational law. The Digest includes cases that apply established legal principles to new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

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THE UNITED STATES MAY EXERCISE JURISDICTION OVER PERSONS ON A "STATELESS" VESSEL WITHOUT SHOWING A NEXUS BETWEEN THE VESSEL AND THE UNITED STATES—*United States v. Pinto-Mejia*, 720 F.2d 248 (2d Cir. 1983).

A Coast Guard patrol observed a fishing boat, the *Ricardo*, moving toward the United States coast with no flag. As the Coast Guard approached, the *Ricardo* changed course seaward and raised the Venezualan flag. A boarding party found approximately twenty tons of marijuana stored in the main hold. Defendants, the crew of the *Ricardo*, pled guilty to one count of possessing marijuana with intent to distribute, a violation of 21 U.S.C. section 955a(a) (1982). After their conviction the crew challenged the district court's jurisdiction on appeal, arguing that (1) under the statute, the *Ricardo* was not "a vessel without nationality," *see* 21 U.S.C. section 955b(d) (1982); Convention on the High Seas, April 29, 1958, art. 6, para. 2, 13 U.S.T. 2312,

T.I.A.S. No. 5200, 450 U.N.T.S. 82, and (2) under international law, even if the *Ricardo* was "stateless," the United States could not exercise jurisdiction without showing a nexus between the *Ricardo* and the United States. The Second Circuit vacated and remanded, holding that there was insufficient evidence to support the finding of "statelessness." The court also rejected the defendants' nexus argument, stating that Congress was not limited by international law and could regulate conduct outside the United States. In enacting section 955a(a), Congress intended to reach persons on "stateless" vessels who possess and plan to distribute controlled substances in any country. The court reasoned that a vessel which flies a national flag submits to that nation's exclusive jurisdiction, and another state must show a nexus between itself and the vessel to justify superseding that exclusive jurisdiction. A "stateless" vessel, on the other hand, has refused to submit to any jurisdiction and may not claim the protection of international law. Therefore, Congress could regulate conduct on stateless vessels without violating international law. *Significance*—This interpretation of section 955a(a) indicates that the United States need not prove defendants' intent to distribute drugs in the United States to prosecute drug dealers who use "stateless" vessels to transport their goods.

II. ALIENS' RIGHTS

ALIEN RETAINS RIGHT TO DEPORTATION PROCEEDING AFTER RETURNING FROM AUTHORIZED DEPARTURE NOTWITHSTANDING THAT IMMIGRATION AND NATURALIZATION SERVICE PERMISSION TO DEPART WAS STYLED AS AN "ADVANCE PAROLE"—*Joshi v. District Director, Immigration and Naturalization Serv.*, 720 F.2d 799 (1983).

Plaintiff alien Joshi petitioned for a writ of habeas corpus from an exclusion order issued by the Immigration and Naturalization Service (INS). Joshi sought relief after he returned to the United States from a departure, authorized by the INS, to resume his application for an adjustment of status to permanent resident. The Board of Immigration Appeals' decision to deny Joshi the procedurally favorable deportation proceedings was affirmed by the District Court for the District of Maryland. The district court held that by giving Joshi permission to leave the United States in the form of an advanced parole, the INS changed his status to a paroled alien subject to exclusion. The Court of Appeals for the

Fourth Circuit vacated the exclusion order and remanded the case, holding that the grant of advance parole status to an alien who receives INS authorization to leave the United States and who later returns to resume a pending application for change of status, will not affect the alien's right to deportation proceedings. The court reasoned that an alien who is granted INS permission for his departure, who is absent from the country for a brief period of time, and whose departure is "unintended or innocent and casual," meets the requirements of 8 C.F.R. section 245.2(a)(3) (1968), which permits the alien's application for permanent resident status to be adjudicated without regard to applicant's previous departure. Advance parole aliens are subject to exclusion proceedings only if the alien receives this status prior to entry or the alien seeks entry because of emergency or public interest. *Significance*—This decision is the first to determine the type of hearing accorded to aliens who obtain INS permission to depart from the United States and who later return to resume a pending application for change of status.

NO VIOLATION OF INTERNATIONAL LAW WHEN EQUIPMENT LOCATED IN UNITED STATES RECORDS TRANSNATIONAL TELECOMMUNICATIONS—*United States v. Romano*, 706 F.2d 370 (2d Cir. 1983).

An informant for the Drug Enforcement Agency made recorded telephone calls to drug dealers in Italy and offered to sell them heroin. The Italians were arrested after they voluntarily came to the United States, took government-supplied heroin samplers, and made a partial payment to government agents. The Italians claimed that the recording of their conversations violated the Treaty of Friendship, Commerce and Navigation, Feb. 2, 1948, United States-Italy, 63 Stat. 2255, T.I.A.S. 1965. The trial court disagreed, and the appellate court affirmed the decision, following *United States v. Catroni*, 527 F.2d 708 (2d Cir. 1975). Even though such a recording is illegal under Italian law, the recording equipment was set up in New York, and United States law applies. Pursuant to the Friendship Treaty terms, the Italian defendants were accorded all the rights that United States citizens would have in similar circumstances. *Significance*—This case establishes that no violation of foreign sovereignty exists when wire tapping is done or telephone recordings are made by means of equipment located in the United States.

III. ANTITRUST

UNITED STATES MANUFACTURERS HAVE A CAUSE OF ACTION UNDER SECTION 4 OF THE CLAYTON ACT FOR INJURIES RESULTING FROM A CONSPIRACY OF FOREIGN MANUFACTURERS TO SELL COMPARABLE PRODUCTS AT ARTIFICIALLY HIGH PRICES IN THEIR HOME MARKET AND AT PREDATORY PRICES IN THE UNITED STATES—*In Re: Japanese Electronic Products Antitrust Litigation*, 723 F.2d 319 (3d Cir. 1983).

Defendants, Japanese television manufacturers, allegedly conspired to sell television sets at artifically high prices in Japan while using excess manufacturing capacity and supercompetitive profits earned in their domestic market to sell comparable products at substantially lower, predatory prices in the United States. The Court of Appeals for the Third Circuit admitted evidence supporting a finding that (1) Japanese producers sold televisions in the United States for losses as great as twenty-five percent; (2) a Japanese trade organization, of which the defandants were members, had "allocated" customers by limiting each manufacturer to five United States merchandisers; and (3) the Japanese Ministry of International Trade and Industry (MITI) had set industry-wide minimum prices on televisions distributed in the United States to avoid confrontations with United States antidumping policies. In a pretrial *in limine* hearing, the district court ruled that much of the plaintiffs' evidence was inadmissable. The court subsequently granted summary judgment to the defendants because the plaintiffs could not establish that the defendants had conspired to price predatorily in the United States television market. The court of appeals reversed in part and remanded, holding that a conspiracy to yield monopoly rents from Japanese consumers while affecting long-term, below-cost sales on comparable goods in the United States would support liability to injured United States plaintiffs under section 4 of the Clayton Act. The court of appeals determined that the minimum prices required by MITI could support a finding of a "collusive establishment of dumping prices" which indicates a predatory strategy to injure domestic television manufacturers. The self-imposed five-customer limit was, as a matter of law, a mechanism to eliminate competition among the Japanese by permitting the concentration of their competitive energies on United States firms. *Significance*—The case holds that a conspiracy to fix prices in a foreign market and the simultaneous below-cost sales of

equivalent merchandise in the United States creates an antitrust cause of action for the injured United States manufacturers under section 4 of the Clayton Act.

IV. ARBITRATION

ANTITRUST CLAIMS ARISING OUT OF INTERNATIONAL CONTRACTS ARE NOT ARBITRABLE UNDER THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT ON FOREIGN ARBITRAL AWARDS—*Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 723 F.2d 155 (1st Cir. 1983).

Plaintiff Mitsubishi Motors brought suit in United States District Court for the District of Puerto Rico, claiming various breaches of a sales contract between itself and defendant Soler Chrysler-Plymouth, an automobile distributor. Mitsubishi also petitioned for an order compelling arbitration of the claims in compliance with a provision of the sales contract. Soler counterclaimed, alleging antitrust violations. Soler argued that the antitrust issue was nonarbitrable, pursuant to the judicial policy that all antitrust issues should be judicially determined. The district court ordered arbitration of all claims and counterclaims, relying on *Sherk v. Alberto-Culver*, 417 U.S. 506 (1974), in which the Supreme Court refused to extend to an international case a domestic policy that excludes securities fraud claims from arbitration. The Court of Appeals for the First Circuit reversed. The court analyzed the language of the Convention on the Recognition and Enforcement of Arbitral Awards and concluded that antitrust matters are not "capable of settlement by arbitration," within the meaning of Article II(1) of the Convention. The court of appeals distinguished *Sherk*, which did not rely upon an analysis of Article II, and noted the important difference between securities laws, which protect a small group of investors, and antitrust laws, which protect the general public. Concluding that this difference justified denying arbitration of the international antitrust claims, the court of appeals remanded the case to the district court to determine whether these claims should be stayed pending the outcome of the arbitrable issues. *Significance*—This decision is the first to extend to international agreements the domestic policy that excludes antitrust issues from arbitration.

V. JURISDICTION AND PROCEDURE

A FOREIGN STATE AS DEBTOR CANNOT ASSERT THE ACT OF STATE DOCTRINE AS A DEFENSE, NOR CAN THE LOAN AGREEMENT BE CONSIDERED AN EXCHANGE CONTRACT WITHIN ARTICLE VIII, SECTION 2(B) OF THE BRETTON WOODS AGREEMENT—*Libra Bank Ltd. v. Banco Nacional de Costa Rica*, 570 F. Supp. 870 (S.D.N.Y. 1983).

The plaintiff banks, participating in an international loan made to a bank wholly-owned by the Costa Rican Government, sued to recover the principal and interest of the unpaid loan and sought return of assets previously withdrawn for attachment. The banks asserted that a resolution adopted by the Central Bank of Costa Rica authorized repayment of external debts to multilateral international agencies only, and thus prohibited repayment of the loan to plaintiffs. The defendant bank also claimed that the act of state doctrine prevented the court from granting the plaintiffs' order. The court, however, held that the act of state doctrine did not apply because debt was sited in New York. The court reasoned that although the foreign state as debtor could refuse to repay the loan, it had accepted as conditions of the loan agreement the jurisdiction of the court, the application of New York law, and repayment through a New York bank. After determining that the act of state doctrine was inapplicable to the instant situation, the court examined the validity of the Costa Rican resolution. Finding that the resolution was inconsistent with the policy and law of the United States, the court refused to give effect to the Costa Rican decree. The defendant's contention that the loan agreement was an exchange contract unenforceable under article VIII, section 2(b) of the Bretton Woods Agreement was rejected. The court concluded that an international ban is not an exchange contract within the meaning of article VIII of the Agreement. Moreover, even if the loan agreement was construed as an exchange contract, the defendant had failed to show that an intervening currency regulation would not render the loan agreement unenforceable, or that the resolutions were imposed consistently with the International Monetary Fund Agreement. *Significance*—The decision evaluates the applicability of the act of state doctrine and the Bretton Woods Agreement to international loans on which a foreign state has defaulted.

CONGRESSIONAL CHALLENGES TO THE UNDECLARED WAR IN NICARAGUA AND NICARAGUAN CITIZENS' TORT CLAIMS AGAINST THE UNITED

STATES GOVERNMENT ARE NONJUSTICIABLE POLITICAL QUESTIONS—*Sanchez-Espinoza v. Reagan*, 568 F. Supp. 596 (D.D.C. 1983).

Members of Congress, citizens of Nicaragua, and Florida residents brought suit against the Reagan Administration, challenging the President's constitutional authority to wage an undeclared covert war against Nicaragua. The Congressional plaintiffs alleged that United States-sponsored terrorist raids against Nicaragua violated the Boland Amendment to the 1983 Department of Defense Appropriations Act and congressional authority to declare war under article I, section 8, cl. 11 of the Constitution; neutrality laws; and the War Powers Resolution. The Nicaraguan plaintiffs sought damages for injuries allegedly caused by the United States-sponsored raids and an injunction prohibiting further United States involvement in Nicaragua. The district court, applying *Baker v. Carr*, 369 U.S. 186 (1962), granted defendants' motion to dismiss the action, holding that the case raised nonjusticiable political questions and that judicial resolution of plaintiffs' claims would interfere with the constitutional war powers of the executive and legislative branches. The court refused to delineate the scope of the president's power to conduct foreign policy in Central America because the court lacked the necessary resources to discover the level of CIA involvement in Nicaragua. To side with either the President or Congress in a dispute over policy in Central America would express a lack of respect by the Judiciary for a coordinate branch of government, and judicial resolution of the controversy would increase the danger of inconsistent policy pronouncements upon a diplomatically sensitive matter, United States military involvement in Nicaragua. *Significance*—This decision marks the judiciary's revival of the political question doctrine to avoid review of presidential military initiatives in Central America.

VI. LABOR RELATIONS

THE AGE DISCRIMINATION IN EMPLOYMENT ACT DOES NOT HAVE EXTRATERRITORIAL APPLICATION TO UNITED STATES CITIZENS WHO WORK FOR UNITED STATES COMPANIES IN FOREIGN COUNTRIES—*Pfeiffer v. Wm. Wrigley, Jr. Co.*, 573 F. Supp. 458 (N.D. Ill. 1983).

Plaintiff, a United States citizen, was employed by the Wm. Wrigley, Jr. Co. (Wrigley) from 1974 to 1978, and by Deutsche

Wrigley, GmbH, a wholly-owned subsidiary of Wrigley, from 1978 until he was dismissed in 1983 at age 65. During his employment with Deutsche Wrigley, GmbH, plaintiff resided in Munich, West Germany and performed virtually all of his work-related duties outside of the United States. Plaintiff claimed that the decision to discharge him was based on his age and, therefore, was in violation of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. section 623. Defendant denied that the termination was based on age and moved for summary judgment on the ground that the ADEA was inapplicable to United States citizens employed in a foreign country. The district court granted the motion for summary judgment, holding that the ADEA does not apply to United States citizens employed by United States companies in foreign countries. Citing *Cleary v. United States Lines*, 555 F. Supp. 1251 (D.N.J. 1983), and *Zahourek v. Arthur Young & Co.*, 567 F. Supp. 1453 (D.C. Colo. 1983), the court noted that Congress did not intend the Act to have extraterritorial application. To support its finding the court pointed to the incorporation into the ADEA of the foreign jurisdiction exemption contained in the Fair Labor Standards Act (FLSA), 29 U.S.C. section 213(f). The court reasoned that because FLSA exempts from jurisdiction any employee who works during the regular business week within a foreign country, such an employee is also exempt from the ADEA. The court also rejected plaintiff's claim that Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000(e), which is construed to apply extraterritorially, was more analogous to the ADEA and therefore mandated its extraterritorial application. *Significance*—This is the first case in which the Seventh Circuit has held that the Age Discrimination in Employment Act does not apply extraterritorially, and it affirms the district court's holding in *Cleary* that Title VII does not control the application of the Age Discrimination in Employment Act to United States citizens working for United States companies in foreign countries.

VII. SECURITIES

SUBJECT MATTER JURISDICTION EXISTS WHEN FOREIGN CITIZEN SUFFERS LOSSES IN UNITED STATES COMMODITIES MARKETS DUE TO FRAUDULENT MISREPRESENTATIONS MADE OUTSIDE THE UNITED

STATES—*Psimenos v. E.F. Hutton & Co., Inc.*, No. 83-7178 (2d Cir. filed Nov. 28, 1983).

Plaintiff, John Psimenos, a Greek citizen, sued E.F. Hutton & Company pursuant to the antifraud provisions of the Commodities Exchange Act, 7 U.S.C. section 1 (1982), for damages resulting from E.F. Hutton's allegedly fraudulent procurement and management of his commodities trading account. E.F. Hutton, a Delaware corporation, acquired Psimenos as a client when the company's European representatives allegedly misrepresented the nature of the commodities trading E.F. Hutton would perform on plaintiff's behalf. Plaintiff claimed that as a result of the mishandling of his account, he suffered heavy losses on the United States commodities markets. The district court dismissed plaintiff's claim for lack of subject matter jurisdiction, reasoning that although the trading occurred within the United States, the alleged fraud was "predominantly foreign" and thus was not within the scope of the Commodities Exchange Act. The court of appeals reversed and remanded, holding that the district court had jurisdiction to hear plaintiff's claim. The commodities transactions on the United States markets substantially furthered the alleged fraud and therefore constituted conduct sufficient to establish federal subject matter jurisdiction. The court of appeals reiterated the position it had adopted in *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974 (2d Cir.), *cert. denied sub nom. Bersch v. Arthur Anderson & Co.*, 423 U.S. 1018 (1975). In that case the court held that subject matter jurisdiction for Securities Act violations exists when the conduct within the United States "directly caused" the plaintiffs' losses. In the instant case the court of appeals found that because Psimenos' losses resulted from the United States commodities trading, subject matter jurisdiction exists under the Commodities Exchange Act even though the alleged fraudulent misrepresentations occurred abroad. *Significance*—This decision establishes that trading in United States commodities markets is sufficient to confer on a federal district court subject matter jurisdiction of a claim for damages brought by an alien pursuant to the Commodities Exchange Act.

FOREIGN SECURITIES SELLER SUBJECT TO IN PERSONAM JURISDICTION BASED ON CORRESPONDENCE WITH DOMESTIC PURCHASER; *Forum Non Conveniens* DOES NOT APPLY: FOREIGN ARBITRATION

CLAUSE IN SECURITIES CONTRACT ENFORCEABLE—*Pioneer Properties, Inc. v. Martin*, 557 F. Supp. 1354 (D. Kan. 1983).

A corporation with its principal place of business in Kansas invested in Canadian real estate joint ventures and later sued the Canadian promoter of the ventures, alleging violation of section 12(2) of the Securities Act of 1933, 15 U.S.C. section 77 *l* (2), and rule 10b-5 of the Securities Exchange Act of 1934, 15 U.S.C. section 78(j). Although the parties disputed where the contract for sale of the securities was made, both agreed that for a period of years the defendant had made telephone calls and had written letters to the plaintiff in Kansas concerning the joint venture. Plaintiff premised jurisdiction on section 22 of the 1933 Act, 15 U.S.C. section 77(v), and section 27 of the 1934 Act, 15 U.S.C. section 78(a)(a), which allow service of process wherever the defendant may be found, provided plaintiff sues in a proper forum. Defendant moved to dismiss, arguing that the court lacked in personam jurisdiction because the transaction had only incidental contacts with Kansas, and urging dismissal on the alternative grounds of *forum non conveniens*. Alternatively, defendant sought to stay the proceeding pending arbitration in Canada pursuant to the contract. The district court cited *Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326 (2d Cir. 1972), and held that it had in personam jurisdiction, reasoning that the broad grounds for actionability under rule 10b-5 encompassed the continuing communication from defendant to plaintiff and was, therefore, a purposeful act by which defendant subjected himself to jurisdiction. The district court also found that because there was legislative intent to give plaintiff broad discretion to choose the forum, the *forum non conveniens* doctrine was not available to defendant. The district court did grant a stay to arbitrate, pursuant to the Federal Arbitration Act, 9 U.S.C. section 1. Although the nonwaiver provisions of the securities laws ordinarily would have invalidated the arbitration clause, the court applied *Scherk v. Alberto-Culver*, 417 U.S. 506 (1974), holding that the Arbitration Act takes precedence over the nonwaiver provisions where there is a "truly international" securities transaction. *Significance*—First, this is the first case in which a course of correspondence alone has supported in personam jurisdiction over a foreign seller of securities. Second, although *Scherk* had involved a multinational transaction, the district court applied the *Scherk* "truly international" standard to enforce an arbitration clause in a securities transaction occurring entirely within

two countries.

FAILURE OF DEFENDANT TO WAIVE SWISS BANK SECRECY IN INSIDER FRAUD PROSECUTION RESULTS IN ADVERSE INFERENCE THAT SWISS BANK ACCOUNT EXISTS—*SEC v. Musella*, [Current Volume] FED. SEC. L. REP. (CCH) ¶ 99,516 (S.D.N.Y. Oct. 6, 1983).

In a securities fraud action, the District Court for the Southern District of New York granted the SEC's request to require one of the defendants to execute a waiver of Swiss bank confidentiality. When the defendant refused to execute the waiver, the court held him in civil contempt. The court also granted the SEC's motion for a coercive sanction, drawing, as trial court, an adverse factual inference that defendant had an account with a Swiss bank. Rejecting as insubstantial the defendant's constitutional due process, privacy and self-incrimination claims, the court reasoned, "[b]ecause it is logical to assume that a refusal to give a voluntary waiver is triggered by the existence of the . . . account . . . , the drawing of an adverse inference constitutes an appropriate remedy." FED. SEC. L. REP. (CCH) at ¶ 99,516. The court added that defendant could cure any hardship by agreeing to permit appropriate inquiries in Switzerland. *Significance*—The decision is the first to apply the adverse inference sanction to Swiss bank secrecy in a securities fraud case.

VIII. TRADE REGULATION

THE 1953 TREATY OF FRIENDSHIP, COMMERCE, AND NAVIGATION WITH JAPAN DOES NOT BAR AN ACTION BROUGHT PURSUANT TO THE ANTIDUMPING ACT OF 1916—*In Re: Japanese Electronic Products Antitrust Litigation*, 723 F.2d 319 (3rd. Cir. 1983).

Plaintiffs, Zenith Radio Corporation and National Union Electric Corporation, brought suit against several Japanese and American electronics corporations alleging that defendants engaged in illegal dumping in violation of the Antidumping Act of 1916 (1916 Act), 15 U.S.C. section 72 (1976). Zenith claimed that consumer electronics products (CEPs) were selling in the United States at prices below those charged in Japan. The 1916 Act makes it illegal to "import, sell, or cause to be imported or sold . . . articles within the United States at a price substantially less than the actual market or wholesale price of such articles . . . in the principal markets of the country of their production . . . : Provided,

[t]hat such act or acts be done with the intent of destroying or injuring an industry in the United States . . . ." The district court granted partial summary judgment against plaintiffs, after determining that the 1953 Treaty of Friendship, Commerce, and Navigation with Japan, 4 U.S.T. 2063, T.I.A.S. No. 2863, did not bar plaintiffs' dumping claims under the 1916 Act. The Treaty provides that Japanese products offered for resale in the United States shall be afforded "national treatment in all matters affecting internal taxation, sale, distribution, storage and use." The defendants argued that application of the 1916 Act to Japanese-made CEPs sold in the United States discriminates against those goods in violation of the Treaty. The district court, however, reasoned that CEPs sold in the United States were not sufficiently comparable to those sold in Japan to come within the purview of the 1916 Act. The Court of Appeals for the Third Circuit affirmed the district court's decision concerning the Treaty and held that the application of the 1916 Act did not discriminate against the CEPs in violation of the Treaty. It noted that the Treaty does not require that Japan's goods be given identical treatment by the United States, only that they be accorded "national treatment." The court of appeals, however, rejected the finding that the CEPs sold in the United States and those sold in Japan were not sufficiently comparable to violate the 1916 Act. Finding no "legally significant" difference that would distinguish the products, the court also determined that there was sufficient evidence to raise issues of material fact regarding the defendants' alleged pricing practices and the specific intent required by the 1916 Act. *Significance*—This case highlights some of the complex antitrust issues arising in United States-Japanese trade practices under the 1916 Act and sets forth the standards used to analyze those questions.

PRELIMINARY INJUNCTION PROHIBITING PAYMENT TO IRANIAN BANK OF INTERNATIONAL STANDBY LETTER OF CREDIT IS VALID—*Rockwell Int'l Systems v. Citibank*, 719 F.2d 583 (2d Cir. 1983).

Plaintiff, Rockwell International, contracted with the Iranian Ministry of War to build a communications system in Iran. Rockwell secured its performance with guarantees issued by the Iranians' Bank and backed by two standby letters of credit from Citibank which were in favor of the Iranian Government. After the Iranian Revolution, the Iranians' Bank's successor, Bank Tejarat, called for Citibank's payment of the letters of credit because Rockwell had not completed its contract. Rockwell sought

and obtained a preliminary injunction in district court enjoining defendant Citibank from paying Bank Tejarat's demands under the letters of credit. The court of appeals affirmed the district court's decision, upholding the preliminary injunction because (1) the Hague Tribunal probably would not hear the case, thereby causing Rockwell to suffer irreparable harm; and (2) Rockwell was likely to succeed on the merits by claiming that the Iranian Government had acted fraudulently in calling the letters. *Significance*—The decision demonstrates the federal courts' willingness to grant a preliminary injunction when a foreign government calls in bad faith for payment of letters of credit.